

Panaji, 28th August, 2014 (Bhadra 6, 1936)

SERIES II No. 22

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- A. There are four Extraordinary issues to the Official Gazette, Series II No. 21 dated 21-08-2014 as follows:—

- (1) *Extraordinary dated 21-08-2014 from pages 451 to 452 regarding Notifications from Department of Finance (Revenue & Control Division).*
- (2) *Extraordinary (No. 2) dated 21-08-2014 from pages 453 to 460 regarding Order from Department of Urban Development (Directorate of Municipal Administration).*
- (3) *Extraordinary (No. 3) dated 22-08-2014 from pages 461 to 462 regarding Order from Department of Panchayati Raj & Community Development (Directorate of Panchayats).*
- (4) *Extraordinary (No. 4) dated 27-08-2014 from pages 463 to 464 regarding Notification from Department of General Administration.*

Note:- B. In the Extraordinary (No. 2) for Sr. II No. 21 dated 21-8-2014; the page numbering shall be 453-460 instead of 423-430.

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 2/14/95/Agri(Part)/Vol.II/135

Government is pleased to order transfer of Smt. Kameshwari Raikar, Assistant Agriculture Officer, presently working at Zonal Agricultural Office, Sanguem to Zonal Agriculture Office, Margao against the post vacated by Smt. Vismita Marathe on promotion with immediate effect.

Smt. Raikar will not be entitled for joining period and TA/DA as the transfer is made at her own request.

By order and in the name of the Governor of Goa.

Orlando Rodrigues, Director & ex officio Joint Secretary (Agriculture).

Tonca, Caranzalem, 14th August, 2014.



Department of Animal Husbandry

Directorate of Animal Husbandry & Veterinary Services

Order

No. 2-14-93-AH/Part-III/2503

Read: 10/74/14-AH/1247 dated 11-06-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/3(1)/2013/578 dated 26-05-2014, the Government of Goa is pleased to appoint Dr. Charlette Elvina Fernandes to the post of Veterinary Officer, Group 'B', Gazetted in the Directorate of Animal Husbandry & Veterinary Services, Panaji-Goa on regular basis in the pay scale of PB-2: ₹ 9,300-34,800 with grade pay of ₹ 4,600/- plus 25% NPA and other allowances as applicable.

Her appointment will take effect from the date of her joining the post. Her character and antecedents has been verified by the District Magistrate North and she was found medically fit to be appointed to Government Service. Upon joining the service she shall be posted at Veterinary Dispensary, Calangute.

The above Officer shall be on probation for a period of 2 years.

By order and in the name of the Governor of Goa.

Dr. B. Braganza, Director & ex officio Joint Secretary (AH).

Panaji, 12th August, 2014.

Order

No. 2-14-93-AH/Part-III/2504

Read: 10/74/14-AH/1251 dated 11-06-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/3(1)/2013/578 dated 26-05-2014, the Government of Goa is pleased to appoint Dr. Priya Paresch Dalal to the post of Veterinary Officer, Group 'B', Gazetted in the Directorate of Animal Husbandry & Veterinary Services, Panaji-Goa on regular basis in the pay scale of PB-2: ₹ 9,300-34,800 with grade pay of ₹ 4,600/- plus 25% NPA and other allowances as applicable.

Her appointment will take effect from the date of her joining the post. Her character and antecedents has been verified by the District Magistrate North and she was found medically fit to be appointed to Government Service. Upon joining the service she shall be posted at Veterinary Hospital, Tonca.

The above Officer shall be on probation for a period of 2 years.

By order and in the name of the Governor of Goa.

Dr. B. Braganza, Director & ex officio Joint Secretary (AH).

Panaji, 12th August, 2014.

Order

No. 2-14-93-AH/Part-III/2505

Read: 10/90/14-AH/1246 dated 11-06-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/3(1)/2013/578 dated 26-05-2014, the Government of Goa is pleased to appoint Dr. Rama Gopal Parab to the post of Veterinary Officer, Group 'B', Gazetted in the Directorate of Animal Husbandry & Veterinary Services, Panaji-Goa on regular basis in the pay scale of PB-2: ₹ 9,300-34,800 with grade pay of ₹ 4,600/- plus 25% NPA and other allowances as applicable.

His appointment will take effect from the date of his joining the post. His character and

antecedents has been verified by the District Magistrate North and he was found medically fit to be appointed to Government Service. Upon joining the service he shall be posted at Veterinary Dispensary, Usgao.

The above Officer shall be on probation for a period of 2 years.

By order and in the name of the Governor of Goa.

Dr. B. Braganza, Director & ex officio Joint Secretary (AH).

Panaji, 12th August, 2014.

Order

No. 2-14-93-AH/Part-III/2506

Read: 10/71/14-AH/1249 dated 11-06-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/3(1)/2013/578 dated 26-05-2014, the Government of Goa is pleased to appoint Dr. Natasha Nilesh Asolkar to the post of Veterinary Officer, Group 'B', Gazetted in the Directorate of Animal Husbandry & Veterinary Services, Panaji-Goa on regular basis in the pay scale of PB-2: ₹. 9,300-34,800 with grade pay of ₹ 4,600/- plus 25% NPA and other allowances as applicable.

Her appointment will take effect from the date of her joining the post. Her character and antecedents has been verified by the District Magistrate North and she was found medically fit to be appointed to Government Service. Upon joining the service she shall be posted at Veterinary Dispensary, Siolim.

The above Officer shall be on probation for a period of 2 years.

By order and in the name of the Governor of Goa.

Dr. B. Braganza, Director & ex officio Joint Secretary (AH).

Panaji, 12th August, 2014.

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Department of Finance

Revenue & Control Division

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Notification

No. 2/6/2014-Fin(R&C) (A)/1386

In exercise of the powers conferred by Section 8 of the Goa Excise Duty Act, 1964 (Act 5 of 1964)

(hereinafter referred to as the "said Act") and in supersession of all earlier Notifications issued in this regard, the Government of Goa hereby prescribes the maximum quantity of liquor which can be possessed, within the State of Goa, by any person without a permit issued in accordance with the provisions of the said Act and the rules made thereunder, as follows:-

- (i) 12 quart bottles of Indian made foreign liquor or foreign liquor other than beer and 24 bottles of beer for any person including his family.
- (ii) 18 quart bottles of country liquor for any person including his family.
- (iii) 06 quart bottles of denatured spirit and 02 quart bottles of rectified spirit or absolute alcohol.

This Notification shall come into force from the date of it's publication in the Official Gazette.

By order and in the name of the Governor of Goa.

Ajit S. Pawaskar, Under Secretary, Finance (R&C).

Porvorim, 26th August, 2014.

Notification

No. 2/6/2014-Fin(R&C) (B)/1389

In exercise of the powers conferred by Section 5 of the Goa Excise Duty Act, 1964 (Act 5 of 1964) (hereinafter referred to as the "said Act") and in supersession of all earlier Notifications issued in this regard, the Government of Goa hereby prescribes the maximum quantity of liquor which can be transported, from one place to another, within the State of Goa, by any person without a permit issued in accordance with the provisions of the said Act and the rules made thereunder, as follows:-

- (i) 12 quart bottles of Indian made foreign liquor or foreign liquor other than beer and 24 bottles of beer for any person including his family.
- (ii) 12 quart bottles of country liquor for any person including his family.
- (iii) 06 quart bottles of denatured spirit and 02 quart bottles of rectified spirit or absolute alcohol.

This Notification shall come into force from the date of it's publication in the Official Gazette.

By order and in the name of the Governor of Goa.

Ajit S. Pawaskar, Under Secretary, Finance (R&C).

Porvorim, 26th August, 2014.

Department of Home

Home—General Division

Order

No. 3/14/83-HD(G)/Part File-I

Read: Memorandum No. 3/14/83/2585-HD(G)/Part File-I dated 28-5-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/21(1)/2013/371 dated 27-12-2013, Government is pleased to appoint Shri Nitin Vassudev Raiker to the post of Deputy Director (Fire Services) (Group "A", Gazetted) in the Directorate of Fire & Emergency Services, St. Inez, Panaji on temporary basis in the Pay Band-3 ₹ 15,600-39,100+Grade Pay of ₹ 6,600/- with effect from the date of revival of the post.

Shri Nitin Vassudev Raiker shall be on probation for a period of two years from the date of joining.

The appointment is made subject to the medical fitness and revival of the post.

The appointment is made against the vacancy occurred due to creation of the post of Dy. Director (Fire Services) vide order No. 3/7/2000-HD(G) dated 12-09-2001.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Home).

Porvorim, 13th August, 2014.

Order

No. 1/76/2012-HD(G)/GHRC/2598

Ex post facto sanction of the Government is hereby accorded to extend the re-employment period of Shri Rohidas M. Naik, retired Assistant Accounts Officer of the Accounts Cadre as Section Officer in the Goa Human Rights Commission, for

a period of six months with effect from 01-06-2014 to 30-09-2014 i.e. upto 65 years of age, and to fix his pay as per C.C.S. (Fixation of Pay of Re-employed Pensioners) Orders, 1986 in terms of O.M. No. 10/1/77-PER (Part) dated 21-08-2014.

The expenditure on the above will be met from the Budget Head Demand No. 23: 2070—Other Administrative Services; 00; 105—Special Commission of Enquiry, 03—Goa State Human Rights Commission (N.P), 01—Salaries.

This issues with the approval of the Cabinet vide its LXIVth meeting of the Council of Ministers held on 05-08-2014 and concurrence of the Finance (Rev & Cont) Department vide their U.O. No. 1487027/F dated 29-05-2014.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Home).
Porvorim, 14th August, 2014.

Order

No. 2/59/92-HD(G)/Part File II/2599

Whereas, it has come to the notice of the Government through news published in local dailies on 11-08-2014, that, a section of Goa Government employees under the banner of Goa Government Employees Association have decided to resort to pendown strike in Government Departments and Government utility services on 18-08-2014.

And whereas, it is further seen that staff with Departments providing essential services to the public will participate in the said strike on 18-08-2014, which will cause undue disruption in the working of the Organisation and cause hardship to the people by disrupting the essential service provided by the Government.

Now therefore, Government of Goa, in exercise of the powers conferred by sub-section (1) of Section 3 of the Goa Essential Services Maintenance Act, 1988 (Goa Act 20 of 1989), being satisfied that in the public interest it is necessary so to do hereby prohibits strike in any form in all Government and Government aided Institutions/ Departments and all other institutional and public utility services of the Government in the State of Goa with immediate effect.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Home).
Porvorim, 14th August, 2014.

Office of the Director General of Police

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Order

No. CA-I/108(P)/Vol. IV/7524/2014

As per the recommendation of the Police Establishment Board and the approval of the Government of Goa conveyed by Home Department vide letter No. 1/19/2013-HD(G) dated 05-08-2014, the below mentioned Police Inspectors are hereby promoted to the post of Junior Scale Officers (Deputy Superintendent of Police) of Goa Police Service in Pay Band-3 ₹ 15,600-39,100 and Grade Pay ₹ 5,400/-, purely on ad hoc basis, with immediate effect:

Sl. No.	Name	Place of posting
1.	Smt. Maria Monseratte	CID FB, Panaji.
2.	Shri Anthony Monseratte	GRP Camp, Altinho.
3.	Shri Ramesh Y. Gaonkar	GRP C Coy.
4.	Shri Nelson Alburquerque	Siolim Coastal PS.
5.	Smt. Sucheta B. Dessai	CID SB, Panaji.
6.	Smt. Ezilda D'Souza	Women PS.
7.	Smt. Sunita Sawant	CID CB, Panaji.
8.	Shri Dharmesh G. P.	Traffic Cell, Panaji.
	Angle	

2. The ad hoc promotion shall be for a period of one year or till the vacancies are filled on regular basis, whichever is earlier.

3. The ad hoc promotion shall not bestow the promoted officers any claim for regular appointment and the service rendered on ad hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade.

T. N. Mohan, IPS, Director General of Police (Goa).

Panaji, 5th August, 2014.

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Department of Information Technology

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Order

No. 1(91)/2008/DOIT/Appointment of Software Engineer/1027

Read: Memorandum No. 1(91)/2008/DOIT/ /Appointment of Software Engineer/489 dated 11-06-2014.

On the recommendation of Goa Public Service Commission as conveyed vide their letter No. COM/I/5/76(1)/2011 (Part file)/547 dated 09-05-2014, Government is pleased to appoint

Ms. Eldrida Berwina Crasto on temporary basis to the post of Software Engineer (Group 'B', Gazetted) under the General Category in the Department of Information Technology in the pay scale of (Pay Band-2) ₹ 9,300-34,800+₹ 4,600/- Grade Pay and other allowances as admissible from time to time, and as per the terms and conditions contained in the Memorandum cited above, with effect from the date of her joining to the post.

Ms. Eldrida Berwina Crasto shall be on probation for a period of two years from the date she assumes charge of the post of Software Engineer, Department of Information Technology.

District Magistrate, Office of the District Magistrate South Goa District, Margao-Goa has verified the character and antecedents of Ms. Eldrida Berwina Crasto and communicated that nothing adverse has been found against her as per the records of concerned police station vide letter No. 2014/3535/2/MAG/158/6169 dated 28-07-2014. Further she has also been declared medically fit by the Medical Board of Goa Medical College, Bambolim-Goa under Medical Certificate vide letter No. 4/105/85-H/GMC/2014/288/2556 dated 10-7-2014.

By order and in the name of the Governor of Goa.

Nilesh B. Fal Dessai, Director & ex officio Joint Secretary (IT).

Porvorim, 31st July, 2014.



Department of Labour

Order

No. 28/42/2013-Lab/696

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Wallace Pharmaceuticals Pvt. Ltd., Curti, Ponda-Goa, and its workmen represented by the Gomantak Mazdoor Sangh, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said

dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

- "(1) Whether the action of the management of M/s. Wallace Pharmaceuticals Private Limited, Curti, Ponda, Goa, in not conceding the following Charter of Demands raised by the Gomantak Mazdoor Sangh, Ponda, Goa, is legal and justified?

CHARTER OF DEMANDS

(1) DEMAND No. 1: PAY SCALES

GRADE	SCALES
I	3000-145-3725-160-4525-175-5400-190-6350-205-7375-220-8475-235-9650-250-10900.
I-B	2800-135-3475-150-4225-165-5050-180-5950-195-6925-210-7975-225-9100-240-10300.
II-A	2500-125-3125-140-3825-155-4600-170-5450-185-6375-200-7375-215-8450-230-9600.
II-B	2600-135-3275-150-4025-165-4850-180-5750-195-6725-210-7775-225-8900.
III-A	2300-105-2775-110-3325-125-3950-140-4650-155-5425-170-6275-185-7200-200-8200.
III-B	2400-115-2975-120-3575-135-4250-150-5000-165-5825-180-6725-195-7700-210-8750-225.
IV-A	2100-95-2575-100-3075-105-3600-110-4150-115-4725-120-5325-125-5950-135.
IV-B	2200-100-2700-105-3225-110-3775-115-4350-120-4950-125-5575-130-6225-140-6925-150.
Special-A	3200-160-4000-170-4850-180-5750-190-6700-200-7700-225-8825-250-10075-250.
Special-B	3300-175-4175-185-5100-195-6075-205-7100-230-8250-255-9525-280-10925-310.

(2) DEMAND No. 2: FLAT RISE

It is demanded that all the workmen shall be given the flat rise at the rate mentioned below:

Grade : Special Rs. 3000/-

Grade-I : Rs. 2800/-

Grade-II : Rs. 2700/-

Grade-III : Rs. 2600/-

Grade-IV : Rs. 2500/-

Fitment : The above amounts should be added to the existing basic and thereafter fitted in the revised pay scale in the higher stage.

(3) DEMAND No. 3: SENIORITY INCREMENTS

It is demanded that the workmen should be given seniority increments as mentioned below:

Service upto 3 years :	One increments
Service from 3 years to 7 years :	Two increments
Service from 7 years to 10 years :	Three increments
Service from 10 years to 15 years :	Four increments
Service from 15 years to 20 years :	Five increments
Service from 20 years to 25 years :	Six increments
Service above 25 years :	Seven increments

(4) DEMAND No. 4: VARIABLE DEARNESS ALLOWANCE

It is demanded that Variable Dearness Allowance shall be paid at the revised rate of Rs. 3.10/- per point rise beyond 2500 points of AICPI (1960), the computation of VDA shall be made quarterly based as per existing system.

(5) DEMAND No. 5: HOUSE RENT ALLOWANCE

It is demanded that the House Rent Allowance should be paid at the revised rate of 25% of basic and dearness allowance, as the cost of accommodation is very high in Goa due to Tourist State.

(6) DEMAND No. 6: EDUCATION ALLOWANCE

It is demanded that the Education Allowance shall be paid at the revised rate by adding Rs. 1250/- to the existing allowance.

(7) DEMAND No. 7: CONVEYANCE ALLOWANCE

It is demanded that all workmen shall be paid conveyance allowance at the revised rate by adding Rs. 2000/- to the existing allowance.

(8) DEMAND No. 8: DOMENCILAIRY TREATMENT ALLOWANCE

It is demanded that the existing Domencilairy Treatment Allowance shall be revised by adding Rs. 1000/- to the existing DTA of the workmen and paid accordingly.

(9) DEMAND No. 9: CANTEEN FACILITY

It is demanded that the canteen facility shall be provided to all the workers in all the shifts as the workers are required to work in all the shifts and there is no food available in nearby area.

(10) DEMAND No. 10: PAID HOLIDAYS

It is demanded that all the workmen shall be granted paid holidays at the rate of 12 days per year. Further, it is demanded that the festival holidays that fall on Sundays shall be changed to next day or one day earlier, which shall be finalized in consultation with the Union.

DEMAND No. 11: LEAVE

It is demanded that all the workers should be given leave on following basis:

(a) Earned Leave:- All the workmen should be given earned leave at the rate 35 days Earned Leave per year with accumulation upto 120 days and leave shall be allowed to take 5 times in a year.

(b) Casual Leave:- All the workmen should be given Casual Leave at the rate of 15 days per year with encashment facility.

(c) Sick Leave:- Those workmen covered under ESIC should be given Sick Leave at the rate of 15 days per year. And those workmen outside the purview of ESIC shall be given 25 days Sick Leave per year with accumulation upto 75 days.

(12) DEMAND No. 12: LEAVE TRAVEL ASSISTANCE

It is demanded that Leave Travel Assistance should be paid at the revised rate of Rs. 650/- per annum with minimum of four earned days leave. The amount shall be paid one week before the commencement of leave.

(13) DEMAND No. 13: MEDICAL REIMBURSEMENT/MEDICAL ALLOWANCE

It is demanded that those workmen who are outside the purview of the ESIC, shall be imburshed the medical expenses incurred by him for self and an amount of Rs. 5000/- per annum shall be paid as medical allowance to meet the day to day needs of the family members of the Workmen.

(14) DEMAND No. 14: PROMOTION POLICY

It is demanded that separate promotion policy should be promulgated in consultation with the Union. This promotion policy shall be made applicable to packers, sweepers, store attendant's etc. The detail promotion policy will be submitted to the management at the time of negotiations.

(15) DEMAND No. 15: LOAN

It is demanded that free loan of Rs. 2,00,000/- should be granted for House repair and construction of House. And Rs. 50,000/- to meet the expenses towards the purchase of house hold articles or marriage of self or his/her family member, scooter, etc.

(16) DEMAND No. 16: FESTIVAL ADVANCE

It is demanded that all workmen shall be granted festival allowance once in a year at the time of festival of Rs. 5000/- each to meet the additional expenses incurred by him for such festival.

(17) DEMAND No. 17: EMPLOYMENT NEXT TO KIN

It is demanded that the kin of the workmen who died or retired shall be given employment in the company.

(18) DEMAND No. 18: UPGRADATION

It is demanded that those employees could not get higher grade such employees should be upgraded on the date of completion of the 5 years of service in the grade mentioned in the settlement.

(19) DEMAND No. 19: SHIFT ALLOWANCE

It is demanded that those workmen work in the shifts shall be paid shift allowance as under:-

Second shift :- Rs. 50/- per shift.

(20) DEMAND No. 20: DINNER ALLOWANCE

It is demanded that the existing meals allowance shall be revised to Rs. 75/-per day and shall be paid including working on holiday.

(21) DEMAND No. 21: CANTEEN ALLOWANCE

It is demanded that canteen shall be revised and paid @Rs. 1000/- per month per worker.

(22) DEMAND No. 22: PICNIC

It is demanded that as per the past practice the Picnic, the company should reimburse expenses of the workmen within Goa once in a year.

(23) DEMAND No. 23: FIXED DEARNESS ALLOWANCE

It is demanded that all the Fixed Dearness Allowance shall be revised by adding Rs. 1500/- to the existing FDA.

(24) DEMAND No. 24: SUPPLY OF SNACKS IN SECOND SHIFT

It is demanded that in the second shift company should provide snacks and tea during the tea time every day as provided in the first and general shift workers.

(25) DEMAND No. 25: CONFIRMATION OF SERVICE

It is demanded that those temporary workmen worked for three years and more shall be confirmed immediately.

(26) DEMAND No. 26: OFFICIATING ALLOWANCE

It is demanded that the existing officiating allowance is very less and hence the same should be revised by adding Rs. 10/- per day worked.

(2) If the answer to issue No. (1) above is in the negative, than, to what relief the workmen are entitled?"

By order and in the name of the Governor of Goa.

Meena Priolkar, Under Secretary (Labour).

Porvorim, 10th October, 2013.

Notification

No. 28/1/2014- Lab/227

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 10-02-2014 in reference No. IT/3/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim 8th April, 2014.

IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Ms. Bimba K. Thaly, Presiding
Officer)

Ref. No. IT/3/2000

Workmen rep. by
The President
Marmagoa Steel
Employees Union,
C/o House No. 447,
Macazana,
Curtorim, P. O.
Salcete, Goa
V/s

.... Workmen/Party I

M/s. Marmagoa Steel
280, Eclate, Curtorim,
Salcete, Goa

.... Employer/Party II

Workmen/Party I represented by Adv. Shri M. P. Almeida.

Employer/Party II represented by Adv. Shri G. K. Sardessai.

AWARD

(Passed on this 10th day of February, 2014)

In exercise of powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (for short the Act), the Government of Goa vide order dated 5-1-2000 bearing No. CL/3-11(38)/99/92 has referred the following dispute for adjudication by this Tribunal.

“(1) Whether the action of the management of M/s. Marmagoa Steel Limited, Curtorim, in dismissing from the services the following two workmen, on the dates shown against their names, is legal and justified?

(1) Shri Umashankar Yadav with effect from 02-08-99.

(2) Shri Jayaprakash Yadav with effect from 02-08-99.

(2) If not, to what relief the workmen are entitled?”

2. Upon receipt of the dispute, reference IT/3/00 came to be registered and notices were issued to both the parties under registered A. D. post. Upon appearance, Party I filed the claim statement at Exb. 4, Party II filed the written statement at Exb. 5 and Party I then filed the rejoinder at Exb. 6.

3. It is in short the case of Party I that on 22-6-94 the workers of the Party II unionized under Gomantak Mazdoor Sangh and a settlement under Sec.12 (3) r/w Sec.18 (3) of the Act was signed between the said union and Party II. That thereafter on 19-11-96, the workers formed an union i.e. Party I union and the said union through various letters and personal meetings brought to the notice of the management that the working conditions within the premises were not adequate but the management did not implement safety measures. That Party II terminated the services of workmen namely, Shri Umashankar Yadev and Shri Jayaprakash Yadev besides that of other workers namely, Shri Agnelo Esteibero, Mestrilal Sajiwan and Indal Gupta vide letters dated 6-3-99 and 16-3-99. That the union approached the labour commissioner and during the discussions held, a settlement was arrived at. That the terms of the settlement included that the management shall revoke the dismissal order in respect of the above

five workers which included the workmen in the present reference and it was agreed that the said workers shall be kept under suspension pending inquiry and the management shall expeditiously conduct and complete the enquiry proceedings and pass the final order within 60 days from the date of signing of the settlement. That thereafter the enquiry with respect to the workmen in the present reference and the workers Mestrilal and Indal was clubbed together and Shri K.V. Nadkarni was appointed as the enquiry officer. That during the enquiry, the management by letters dated 2-8-99, discharged the services of the workmen and the above other two workers. That the dispute was raised before the labour commissioner and on submitting of the failure report by the labour commissioner, the present dispute has been referred to this tribunal for adjudication. It is the case of the workmen that the charges alleged against them were not proved; that their discharge from service is illegal, null and void and is against the certified standing orders and the principles of natural justice. It is their case that they are unemployed and they have prayed to hold the action of the management in discharging their services w.e.f. 2-8-99 as illegal and bad in law and to reinstate them back in services with continuity in service and full back wages with effect from 2-8-99.

4. In the written statement it is in short the case of Party II that the reference deserves to be rejected as the workmen did not have the authority to sign the statement of claim. It is stated that the Party I union submitted charter of demands dated 14-4-97 pursuant to which a settlement u/s 12(3) r/w Sec.18 (3) of the Act was signed for a period of 3 years and in terms of the said settlement, it was to come into effect from 1-4-97 but the wage revision was to be effective from 1-1-98 and for a period from 1-4-97 to 31-12-97 a lump sum would be paid and accordingly the arrears were paid as per the terms of the settlement but in the month of November 1998, the union placed fresh charter of demands to pay difference of overtime wages for the period 1-4-97 to 31-12-97, which Party II agreed to pay by 24-2-98 with the sole intention of maintaining peace and healthy atmosphere. It is stated that due to financial difficulties, the amount could not be disbursed and as such a notice dated 23-2-99 was displayed differing the payment. It is stated that the workers started non co-operative attitude and sabotaging machinery and go slow, thereby affecting the production and as such the management had no alternative but to suspend the work which was followed by

lockout as per notice dated 27-2-99. It is stated that during the suspension of work, the office bearers of the union and the dismissed employees starting threatening the executives with dire consequences and subsequently in the meeting before the Labour Commissioner, a settlement was arrived at on 17-3-99. It is stated that as per this settlement lock out was lifted and the workers were required to report for duty on 18-3-99 so also the dismissal orders issued to the workers including the workmen in this reference were revoked and they were issued fresh charge sheet dated 18-3-99 by keeping them under suspension pending enquiry and the final order arising out of the enquiry was to be passed within 60 days from the date of the settlement. It is stated that during the continuance of the enquiry, it was observed that the charge sheeted workmen and the union were not co-operating and wanted to delay the enquiry. It is stated that the workmen were entering at the main gate and were threatening the other workers and officials of the company of dire consequences and were asking the union workmen not to co-operative with Party II in production. It is stated that the workmen having found that the enquiry was being proceeded with and the witnesses were being examined, threatened one witness Mr. Suresh Rao of dire consequences thereby making it impossible for Party II to bring the witnesses in the enquiry. It is stated that in the above circumstances, it was decided not to retain the workmen in service in the interest of the organization and accordingly the workers were dismissed w.e.f. 2-8-99. It is the case of Party II that the dismissal of the workmen from service is legal and justified and that the charges of misconduct will be proved against the workmen before this Tribunal and justify the dismissal.

5. In the rejoinder Party I has denied the contentions raised by Party II in the written statement and has asserted its case projected in the claim statement.

6. On the basis of above averments of the respective parties, issues dated 31-1-01 at Exb.7 were framed as under:

1. Whether the workmen/Party I prove that the action of the Party II in dismissing them from service w.e.f. 2-8-99 is illegal and unjustified?
2. Whether the employer/Party II proves that the statement of claim filed by the Workmen/Party I is not maintainable?

3. Whether the Employer/Party II proves that the workmen are guilty of misconducts?

4. Whether the workmen/Party I are entitled to any relief?

5. What Award?

7. In terms of order dated 16-10-08 (Exb. 31), it was held by this court that Party II has dismissed this workmen without holding the enquiry and therefore the onus of proving the charges levelled against the workmen justifying the action of dismissal is on Party II and therefore the Party II is required to begin first and adduce evidence on issue No. 3 and only then the burden would shift on Party I to prove that the action of the dismissal is illegal or unjustified. It is therefore clear from the above observations made in Exb. 31 that in case Party II fails to prove issue No. 3, Party I is not required to prove issue No. 1. Thus, in terms of above order the evidence was first led by Party II.

8. In its evidence Party II examined Shri K. Raghvendran as witness No.1 Shri Y. K. Govil as witness No. 2, Shri T. K. Tickoo as witness Nos. 3 and Shri Alexander A.C. Rodrigues as witness No. 4. On the other hand Party I examined Shri Umashankar Yadav and Shri Jayaprakash Yadav as their witnesses and closed the case.

9. Heard ld. adv. Shri G. K. Sardessai for Party II and learned advocate Shri M.P. Almeida for Party I.

10. In his arguments ld. advocate for Party II stated that since the assault was on the superior officers of Party II, the court should not interfere in the punishment imposed. In support of his submissions, he relied on the judgments such as **Kolhapur Zilla Sahakari Dudha Utpadak Sangh, Kolhapur v/s Shivaji Shankar Pharakate & Anr. 2009 I CLR 286, Hombe Gawda Educational Trust and another v/s State of Karnataka and others (2006) I SCC 430, Madhya Pradesh Electricity Board v/s Jagdish Chandra Sharma 2005 I CLR 1074, Orissa Cement Ltd., and Adikanda Sahu 1960 SC 518, Mahindra and Mahindra Ltd., v/s N.B. Narawade 2005 I CLR 803, New Shorrock Mills v/s Maheshbhai T. Rao (1996) 6 SCC 590, and U. P. State Road Transport Corporation v/s Subhash Chandra Sharma and others AIR 2000 SC 1163**. He stated that in domestic enquiry the strict and sophisticated rules of evidence may not apply and all materials which are logically probative for a prudent mind are permissible. In support of his above statement, ld. advocate for Party II relied on the judgment in the case of **State of Haryana and another v/s Rattan Singh 1977 Lab 845**.

11. On the other hand ld. advocate for Party I stated that there is no iota of evidence before this court to say that the charges of misconduct levelled against Party I workmen are established. He further stated that once Party II fails to prove issue No.3 relating to misconduct by Party I workmen, the question of proving issue No. 1 which is on the subject of justification and legality of dismissal from service w.e.f. 2-8-99, does not arise. By referring to the judgments relied upon the ld. advocate for Party II, he stated that facts in the above cases are totally different from the facts in the instant case and therefore the observations made in those judgments though are correctly made in those peculiar set of facts, cannot be applied to the instant case. Thus, according to him, the ratios in the above judgments cannot be made applicable to the case in hand.

12. I have gone through the records of the case and have duly considered the submissions made by both the learned advocates.

13. I now proceed to answer the issues with my findings on the same and the reasons thereof.

Issue No. 1 ... Does not arise.

Issue No. 2 ... In the negative.

Issue No. 3 ... In the negative.

Issue No. 4 ... Party I Workmen are entitled for total compensation of Rs. 2,00,000/- each.

Issue No. 5 ... As per order below.

REASONS

14. *Issue No. 3:* Undoubtedly, the workmen in this reference were dismissed from the services by Party II vide letters dated 2-8-99. These letters are produced by Shri K. Raghvendra at Exb. 44 colly. Reading of letter at Exb. 44 colly makes it clear that enquiry on the charge sheets dated 18-3-99 (issued to the workmen herein) was being conducted and one of the dates of the enquiry was fixed on 1-8-99. That on 31-7-99 an affidavit was received from the witness Shri P. Suresh Rao mentioning amongst other things that he was unable to attend the enquiry as he cannot stay in Goa to give further evidence in the enquiry due to threats of dire consequences given to him. It is also stated in the affidavit that apart from Shri P. Suresh Rao other witnesses were also threatened of dire consequences. Exb. 44 colly further reveals that the witnesses of the management are being threatened so that they cannot give evidence in the enquiry. So also that, the workmen herein were threatening the willing workers, officers and

managers of dire consequences, who want to attend the work and are also instigating the workmen to abstain from duty and not to continue overtime in the critical arrears of work as a result of which the entire production has come to stand still. It is further stated in Exb. 44 colly that the subsequent behaviour of the workmen in this reference as well as their attitude after issuing the charge sheet also shows that they do not want to co-operate with the enquiry but to see that the management is not in a position to examine their witnesses. It is further stated that in such circumstances management finds that it is not practically possible to continue with domestic enquiry and has therefore decided in the interest of the organization not to retain these workmen in services and therefore they are dismissed from the company's services with immediate effect.

15. It is therefore clear from above contents of Exb. 44 colly that Party II did not complete the enquiry initiated against the workmen vide charge sheets dated 18-3-99. It however cannot be dispute that in terms of the observations in the judgment in the case of **M/s. Firestone Tyre & Rubber Co. India (Pvt) Ltd., v/s The Management and others 1972 I LLJ 278**, even if no domestic enquiry is held or in a case where the domestic enquiry is held but is found to be defective, the employer can lead evidence before the Tribunal in justification of the dismissal or discharge of the workmen, which in other words means that the employer can lead evidence before the Tribunal to prove misconducts against the workmen. In the instant case, the domestic enquiry did not reach its logical conclusion and therefore it is as good as not holding of the enquiry by the management. In such situation, the employer gets an opportunity of leading evidence before the court to prove the misconduct enlisted in the charge sheet. It is therefore required to see if Party II has by leading sufficient and convincing evidence before this court, has proved the misconducts as envisaged in the charge sheets dated 18-3-99. Apparently, charge sheets dated 18-3-99 are at Exb. M2 (colly) in the enquiry file. The charges levelled against the workmen Shri Umashankar Yadav are stated below. It may be mentioned that similar charges have been levelled against Shri Jayaprakash Yadav and thus the same are not reproduced here, to avoid repetition.

" It is reported that on 24-02-99, you were in II shift at about 2:30 pm, you along with a group of workmen instructed the employees

in the LRF to completely stop work when the liquid metal in LRF was ready for casting. In spite of the shift incharge advise to you that the liquid metal in the LRF can result in serious danger to the safety of employees on the shop floor, can result in huge loss to the company and damage to the machinery and equipments, you continued to be adamant and did not allow any employees to perform their normal duties. As the situation was very grave with the liquid metal in the LRF, the shift incharge at about 4:00 pm decided to operate the LRF to ensure that the liquid metal is removed from the LRF. When the LRF was in the process of being switched on in the control room, you along with Mr. Indal Prasad Gupta, Mr. Jayaprakash Yadav, Mr. Mistrilal and along with a group of workmen entered the LRF control room and physically assaulted Mr. Suresh Rao, Dy. Manager (SMS), causing grievous injuries and threatened him with dire consequences if he attempted to operate the LRF. You further switched off the LRF and left the control room.

The above act if proved will amount to following misconducts under the certified standing orders of the company which is applicable to you.

- 28.1 Will full insubordination or disobedience (whether or not in combination with another) of any lawful and reasonable orders of superior.
- 28.2 Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof or resorting to obstruction aimed at or resulting in paralyzing the normal conduct or work of the company.
- 28.11 Riotous, disorderly, indecent or improper behaviour on the premises of the establishment if it adversely affects the working or discipline of the establishment.
- 28.12 Commission of any act subversive of discipline or good behaviour on the precincts of the establishment.
- 28.17 Damage or loss whether willful or due to irresponsible action or damage due to negligence or carelessness to or/of any property of the establishment.
- 28.28 Willful interference with the work of other workmen.
- 28.37 Use of impolite or insulting or abusive language, assault or threat of assault,

intimidation or coercion within the company premises against any employees of the company.

- 28.41 Pursuance of conduct against the interest of the company.
- 28.44 Instigating or demonstration on company's property."

16. Shri K. Raghvendra has in his evidence not deposed on the subject of the contents of charge sheet dated 18-3-99 and what he has stated is that during the conduct of the enquiry the charge sheeted workmen and the union were not co-operating with the enquiry and wanted to delay the same. He has stated that company observed that these workmen were entering the company's main gate and were threatening the other workers and officials of the company of dire consequences and were asking the willing workmen not to co-operate the management in production. He has stated that the workmen did not want to adhere to the settlement dated 17-3-99 and wanted to delay the enquiry. He has stated that the workers threatened one Mr. Suresh Rao of dire consequences making impossible for the company to bring the witnesses in the enquiry and that company observed that a deliberate and systematic attempt was followed by the workers so that the enquiry is not completed at all. He has stated that the company therefore in the interest of the organization decided not to retain the concerned workmen in the services and accordingly dismissed them w.e.f. 2-8-99 which dismissal according to him is fully legal and justified. He has produced the said dismissal orders dated 2-8-99, of both the workmen at Exb. 44 colly and the settlement dated 17-3-99 at Exb. 43.

17. In his cross examination he has admitted that the facts in the charge sheets dated 18-3-99 are not to his personal knowledge. He has also stated that the management representative orally told the management that the charge sheeted workmen and the union were not co-operating in the enquiry and wanted to delay the same. He has stated that he does not know as to which workmen did not want to adhere to the settlement dated 17-3-99 and wanted to delay the enquiry.

18. From the nature of above evidence of Shri K. Raghvendra, it becomes clear that his testimony is of no assistance to Party II to prove the misconduct levelled against the workmen herein in the charge sheet dated 18-3-99 as also in the letter dated 2-8-99, as this witness does not have

any personal knowledge of the incidents mentioned in the charge sheet dated 18-3-99 and letter dated 2-8-99.

19. The other witnesses namely, Y. K. Govil, Shri T. K. Tickoo and Shri Alexander Rodrigues have not at all deposed about the incident mentioned in the charge sheets dated 18-3-99 and also about the other contents of the letter dated 2-8-99. It may be mentioned here that Party II examined Shri Y. K. Govil and Shri T. K. Tickoo only to bring on record the facts relating to an incident dated 30-8-99 to show the involvement of Party I workmen and others in an incident of assault on the officers of Party II, post termination of their services and therefore their testimonies are of no help to Party II to prove misconducts mentioned in the charge sheet dated 18-3-99 and in the letter dated 2-8-99. Shri Alex Rodrigues has been examined to establish that the financial condition of Party II is not sound and hence the testimony of this witness too is of no help to Party II to prove the charges of misconduct levelled against Party I workmen.

20. I have gone through the judgments relied upon by the Id. advocate for Party II. In the judgment in the case of **Kolhapur Zilla (supra)**, the workman was a temporary workman and he was dismissed from service, for misconduct duly proved in disciplinary enquiry, as there was confession of guilt in the enquiry. His complaint of unfair labour practice was dismissed by the labour court. In revision the Industrial Court directed his reinstatement without back wages. However, in the writ petition before the Hon'ble High Court of Bombay, it was held that the Industrial Court has virtually re-appreciated the evidence in its revisional jurisdiction; that admission of guilt by workman in the enquiry proceedings was categoric and unambiguous and thus the punishment of dismissal cannot be regarded as disproportionate. It is in the above context, observed by the Hon'ble High Court that Labour and Industrial Courts, when they deal with challenges to findings in disciplinary enquiries, must reflect a robust awareness of the realities of the economic situation; that serious cases of misconduct such as those of involving theft of the property of the employer have to be dealt with severely and that once a serious act of misconduct is proved, in a fair enquiry, the approach of the Labour Courts should not be to embark upon a search to find just any technical lapse or lacunae to vitiate the enquiry.

21. Viz-a-viz the above observations made in the set of facts in the above mentioned case, in

the instant case (where it is as good as not conducting of an enquiry by Party II in the charge sheet dated 18-3-99), the burden was on Party II to prove the misconduct alleged in the charge sheet dated 18-3-99 by leading evidence before this court, which Party II has failed. Thus, at no stretch of imagination, the observations made in the above case can be imported in the instant case.

22. In the judgment in the case of **Homba Gowda (supra)**, the observations therein are on the subject of jurisdiction vested in the Tribunal u/s 11-A of the Act, while dealing with punishment. This judgment indicates that the jurisdiction to interfere with the quantum of punishment could be exercised only when, *inter alia*, it is found to be grossly disproportionate. It also indicates that the interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that no reasonable person could inflict such punishment. It also states that assaulting a superior at a work place amounts to an act of gross indiscipline. Similar is the case with the judgment in the case of **U.P. State Road Transport Corporation (supra)** in which the driver of the Corporation was held guilty of the misconduct of abusing and threatening to assault the cashier and was awarded punishment of removal from service. The Labour Court set aside the order of removal and substituted it by the punishment of stoppage one wage increment and payment of 50% of the back wages. The Writ Petition filed before the Hon'ble High Court was dismissed summarily. The Hon'ble Apex Court however held that the charge against the driver was a serious charge and thus the discretion exercised by the Labour Court was capricious and arbitrary. It was also held that the punishment awarded was not shockingly disproportionate to the nature of charge found proved against the said driver.

23. It may be mentioned here that the facts in the above cases are totally different from the facts in the instant case, though the observations made in the above judgments which are in those peculiar facts cannot be disputed. However, said observations cannot be applied to the instant case wherein Party II has failed to prove the misconduct by Party I as envisaged in the charge sheet dated 18-3-99, by leading convincing evidence before this court. In such scenario, it would be inappropriate to conclude that punishment of dismissal imposed on Party I workman vide letters dated 2-8-99, could be the one imposed by a reasonable person. This is more

because, Party II has failed to establish that there was assault by Party I workmen on Shri P. Suresh Rao, at the workplace resulting into gross indiscipline. Thus, the observations in the above mentioned judgment are of no help to Party II to advance its case.

24. In the judgment in the case of **Madhya Pradesh Electricity Board (supra)**, a muster roll labourer in the appellant organization had physically assaulted his superior officer and after domestic enquiry, his services were terminated. Labour Court held that the said punishment was harsh and directed his reinstatement with back wages. In appeal, the industrial court restored the order of termination and in the writ petition the Hon'ble High Court upheld the order of the Labour Court. However, in civil appeal, the Hon'ble Apex Court set aside the orders of Labour Court and the Hon'ble High Court and upheld the order passed by the Industrial Court by observing that when punishment of termination is awarded for hitting and injuring a superior officer, with no extenuating circumstances established, it cannot be said to be not justified and it cannot be termed unduly harsh or disproportionate.

25. As stated in the preceding paras, the observations above do not apply to the set of facts in the instant case in which Party II has failed to prove the charges of misconduct levelled against Party I workmen in the charge sheet dated 18-3-99 as well as in the letter dated 2-8-99.

26. In the case of **Orissa Cement (supra)**, the workman was sought to be dismissed from services for abusing his superior officer in vulgar and filthy language. The domestic enquiry was not held but in the application for permission, the employer adduced evidence and the Industrial Court held the workman guilty of misconduct alleged against him but refused to grant permission on the grounds that the concerned workman had tendered an apology to the concerned officer, which apology was found by the Hon'ble Apex Court to be conditional only and as such the order of Tribunal refusing permission prayed for, was set aside.

27. It is noted that the fact situation in the above case is totally different from the fact situation in the instant case and therefore the ratio in the above case, cannot be applied to the instant case.

28. In the case of **Mahindra and Mahindra (supra)** the employee of the appellant was dismissed from service after inquiry for misconduct of using abusive and filthy language

against his superior in the presence of subordinates not only once but twice. Labour Court held that punishment was harsh and thus ordered reinstatement with 2/3rd back wages. The Hon'ble Apex Court in appeal, restored the order of dismissal by observing that the language used by the workman is such that it cannot be tolerated by any civilized society and the use of such abusive language against a superior officer in the presence of subordinates, cannot be termed to be an indiscipline calling for lesser punishment in the absence of extenuating factor. Similar are the facts in the case of **New Shorrock Mills (Supra)** in which badli workman was found guilty in the departmental enquiry for abusing the deputy manager and threatening that the Mill Officers would not be safe outside the mill and that he might murder a few of them and therefore he was discharged. The Labour Court though came to the conclusion that the finding of the departmental enquiry was legal and proper; that the order of discharge was not by way of victimization; that the workmen had misbehaved and the workman was thus guilty of misconduct, interfered with the punishment awarded and ordered his reinstatement with 40% backwages. In these circumstances it was held that the punishment of discharge imposed upon the workman was held as not disproportionate so as to warrant judicial interference. The Labour Court should not have set aside the order of discharge by substituting the same with the order of reinstatement as the punishment imposed by the management was not disproportionate warranting interference by the labour court.

29. As pointed out by me in discussion supra, the facts in both the above cases are totally different from the facts in the case in hand in which Party II has failed to prove the charges of misconduct levelled against Party I workman and hence the observations above cannot be applied to the instant case.

30. At any rate, since discussion supra makes it clear that Party II has totally failed to prove issue No. 3, the same is answered in the negative. It therefore follows that dismissal of Party I Workmen from services w.e.f. 2-8-99, is illegal and unjustified.

31. *Issue No. 1:* Since Party II has failed to prove issue No. 3, the question of Party I proving this issue does not arise and hence my findings.

32. *Issue No. 2:* It is the pleading of Party II that the present dispute has been raised by Party I union and only the President, General Secretary or any other office bearer on the date of filing of the Statement of the Claim can have authority to

sign the Statement of Claim. It may be mentioned here that in para 5 of the claim statement it is the pleading of Party I that, Party I union has its managing committee comprising of Shri Vincent Dias as President, Shri Agnelo Esteibero as General Secretary, Shri Indal Prasad Gupta as Treasurer, Shri Umashankar Yadav and Shri Jayaprakash Yadav both as the members of the Executive Committee. In reply to the above para, vide para 1 in the written statement, the contents of this para are said to be substantially correct by further stating that the said office bearers did not remain to be the office bearers as on 1-3-00 because the said union has held a fresh election and new office bearers were elected and therefore the said so called office bearers had no authority of representative character or otherwise to represent the workers.

33. It may be mentioned here that in their chief examination both the workmen have categorically stated that Shri Agnelo Esteibero who was the General Secretary of union had authority to file the claim statement so also the workers who were charge sheeted were the office bearers of the union and the workmen who have signed the claim statement had authority to sign the same. It is also stated that there have not been any elections as stated by Party II. In their cross examination on the above subject both the workmen have denied the suggestion that Shri Agnelo Esteibero had no authority to file the claim statement. Nonetheless, their statement that the workmen who have signed the claim statement had authority to sign the same, has not been denied in their cross examination.

34. I have already pointed out above the defence taken by Party II in para 1 of their written statement in which they have substantially admitted the contents of para 5 of the claim statement and hence it is thereafter for Party II to establish that the said office bearers did not remain to be the same as on 1-3-00 because the union held a fresh election and elected new office bearers. It is apparent that Party II has not proved the above fact through the witnesses examined by them or otherwise and therefore I have every reason to hold that the statement of claim filed by Party I Workmen is maintainable.

35. Even otherwise records reveal that my Id. predecessor vide order dated 25-8-04 (Exb. 20) on the application for interim relief filed by Party I workmen had directed Party II to pay to Party I workmen certain amount as subsistence allowance as per the dates mentioned in the order and this order was challenged by Party II before

the Hon'ble High Court of Bombay at Goa in which Party I union was one of the respondents. It is apparent from the records that said Party I union was represented before the Hon'ble High Court by the very same advocate Shri M.P. Almeida who has been representing the said union before this court and Adv. Shri M. P. Almeida also submitted across the bar that the office bearers of the union represented by him before the Hon'ble High Court and before this Court are the same. This being the case, it becomes clear that the objection raised by Party II on the maintainability of the claim statement on the grounds that the so called office bearers have no authority to represent the workers, merit no consideration. Hence my findings.

36. *Issue No. 4:* Party I Workmen have prayed to hold the action of management in discharging their services w.e.f. 2-8-99 as illegal and bad in law and to direct the management to reinstate them back in the services with continuity of services and full back wages w.e.f. 2-8-99. Discussion supra makes it clear that Party II has failed to prove that Party I workmen are guilty of misconduct. Thus, their dismissal from service w.e.f. 2-8-99 is apparently illegal and unjustified.

37. As regards the claim of Party I Workmen of back wages, Id. advocate for Party II stated that the law on the subject is well settled, which is that upon holding the termination as illegal and unjustified, back wages is not a natural consequence. He stated that for claiming back wages the person concerned has to show that he was not gainfully employed and that the initial burden lies on him. He stated that after the concerned person places material in that regard, the employer can bring on record materials to rebut the claim. He relied on the judgment in the case of **Kendriya Vidyalaya Sangathan and another v/s S.C. Sharma (2005) 2 SCC 363**, in which the above principle has been culled out.

38. It may be mentioned here that in the claim statement Party I workmen have pleaded that till date they are unemployed. However, in their affidavit in evidence, both the workmen are silent on the subject of unemployment. It cannot be disputed that pleadings without proof cannot be considered. No statement that they are unemployed till date or otherwise has been made by both these workmen, on oath. Thus, I have every reason to hold that these workmen have failed to discharge the initial burden resting on them. Being so, the question of Party II bringing on record materials to prove otherwise, does not arise. Consequently, it follows that Party I workmen

have failed to establish that they are unemployed. Thus, they are not entitled to claim back wages.

39. As regards the claim of Party I workmen to reinstate them with continuity in service, ld. advocate for Party I submitted that once it is established that the termination was illegal and unjustified, Party I workmen are bound to be reinstated with continuity in service. However, Ld. advocate for Party II submitted that present reference is of the year 2000 and thus long period has lapsed by now. He stated that by now the ages of Party I workmen have also been advanced. According to him, relation between Party I workmen and Party II is now strained and that the financial condition of Party II establishment is also not sound. Thus, he stated that the question of reinstatement of Party I workmen with continuity in service, does not arise.

40. Ld. advocate for Party II also referred to the evidence of Shri Y. K. Govil and Shri T. K. Tickoo contending that on 30-8-99 both these witnesses who are the officers of Party II were assaulted by Party I workers and others and therefore the conduct of Party I workmen post termination of their services also needs to be looked into for deciding the aspect of their reinstatement in service. However, Ld. Advocate for Party I stated that Party II has failed to show the involvement of Party I workmen in the alleged incident dated 30-8-99 and even otherwise, the said incident has no bearing on the dispute being adjudicated. As such, according to Ld. Advocate for Party I, the alleged incident dated 30-8-99 cannot come in the way of Party I workmen for claiming reinstatement in service.

41. In their evidence both Shri Y. K. Govil and Shri. T. K. Tickoo, have in short stated that on 30-8-99 the Workmen namely, Mr. Caitano J. Fernandes, Mr. Caitano M. Fernandes, Mr. Conceicao Hilario, Mr. Umashankar Yadav, Mr. Jayaprakash Yadav, Mr. Agnelo Estebeiro and Mr. Mestrilal R. Sajiwan assaulted, abused and gave them threats of killing. They have stated that the aforesaid workmen also assaulted Mr. K. K. Sharma, due to which all of them suffered injuries and they were hospitalized. However, both these witnesses have categorically stated that they were unable to produce the police complaints as well as the medical reports, as the company is unable to trace the same.

42. In his cross examination, Shri Y. K. Govil has stated that apart from workers whose names are stated by him, there were another 50 persons at the spot and 30 amongst them were the

workers. He has stated that he did not file written complaint with the management but orally informed Mr. R. K. Radhakrishnan and Mr. K. Raghavendran about this incident. He has denied the suggestion that they were beaten by the people of locality and not by the workmen, as they were keeping the furnace on and polluting the atmosphere, throughout the day.

43. In his cross-examination Shri T. K. Tickoo has stated that he had given the names of the workers as stated by him in the chief examination along with other names, to the police. His cross-examination further reveals that he does not know as to how many persons by name Caetano Conceicao, Yadav and Sajiwan were working with Party II at the relevant time.

44. As rightly pointed out by the Ld. Advocate for Party I, there is no any documentary evidence on record indicating that any complaints were filed by the aforesaid witnesses to the police about the incident narrated by them, showing the involvement of Party I workmen in the same. They have also not produced copies of any medical records to substantiate their case that they and Mr. K. K. Sharma were seriously injured on account of the above incident. No doubt, there is admission on the part of Party I to the effect that Shri Govil and Shri Tickoo were beaten by people of the locality but this by itself cannot relieve Party II from proving their case of assault by Party I workmen. That apart, Shri Govil has stated that he had orally informed Mr. Radhakrishnan and Mr. K. Raghavendran about this incident but Shri Radhakrishnan who has been examined by Party II, is silent on this aspect of the matter. Further, it appears from the statements made by Shri Tickoo that he does not even know as to how many persons by name Caetano, Conceicao, Yadav and Sajiwan were working with Party II at the relevant time and this statement of Shri Tickoo casts serious doubts on the identification of the workers who are stated to have involved in this incident, from amongst total number of 50 and odd persons who were present at the spot, at the relevant time.

45. Interestingly, Shri Umashankar Yadav and Shri Jayaprakash Yadav have not been cross examined on the so called incident dated 30-8-99. Even for that matter, not even a specific suggestion has been put to these workers that both of them along with others assaulted and threatened Mr. Govil, Mr. Tickoo and Mr. Sharma on 30-8-99 and that the above named three officers of the company were seriously injured and hospitalized

due to assault by them. However only a general suggestion has been put to these witnesses that they were responsible for the assault on the officers of the company, which suggestion in my view, cannot be read as a pointer to the so called incident dated 30-8-99, which is narrated by Shri Govil and Shri Tickoo in their affidavit in evidence.

46. Being so, I am of the considered opinion that the evidence adduced by Party II in support of proof of incident dated 30-8-99 is not at all convincing to say that Party II has succeeded in establishing even the probable occurrence of this incident.

47. As regards the evidence of Shri Alexander Rodrigues, he has produced on record copy of order dated 20-8-99 (Exb. 59), copy of balance sheet and profit and loss account of Party II for the period from 1-4-09 to 31-3-13 (Exb. 57-colly) and copy of order dated 1-8-13 by BIFR (Exb. 60) passed during review hearing, to establish that financial condition of Party II is not sound. In his cross examination, to the suggestion that all the above documents are false and fabricated and that BIFR has been misled on the basis of such documents to declare Party II as sick unit, has been denied by Shri Alexander Rodrigues.

48. No doubt, it appears from the above documentary evidence that Party II is not financially stable, but this by itself cannot be a ground to reject relief to Party I workmen, to which they are legally entitled. This is because, once it is established that termination is illegal and unjustified, the natural consequence that follows is of reinstatement in service and Party I workmen cannot be deprived of the same. Even for that matter, lapse of time, advance age, strained relations or weak financial condition of company cannot be the grounds for rejecting the relief of reinstatement to which Party I workmen are legally entitled. Nonetheless, the above factors can definitely be looked into to mould the relief to which the Party I workmen are entitled to and this is because Party I workmen have not established that they are not gainfully employed. This in other words mean that Party I must be earning their livelihood and it is precisely for this reason the statement on the subject of gainful unemployment is not made by Party I workmen on oath.

49. In the judgment in the case of **Incharge Officer & Anr v/s Shankar Shetty 2010(9) SCC 126 and Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal & Ors**

AIR 2010SC 2140, the Apex Court has reiterated that *"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."*

50. In the light of above position of law viz-a-viz the fact situation in the instant case, I am of the opinion that grant of reasonable compensation to Party I workmen would meet the ends of justice.

51. In para 2 of the claim statement, Party I workmen have pleaded that Shri Umashankar Yadav was appointed on 12-4-93; was confirmed w.e.f. 31-4-94; was redesignated as Turner-A by letter dated 12-9-94; was further promoted as Turner w.e.f. 1-10-98 and the total salary received by him is Rs. 3,520/- and thereafter there were increments. It is also pleaded that Shri Jayprakash Yadav was appointed on 1-10-94; was confirmed w.e.f. 1-4-94, was promoted to 'I Hand C' and the salary at the time of confirmation was Rs. 2605/- p.m. and after promotion the total salary was Rs. 3190/- besides there were increments.

52. Considering the totality of the facts such as the quantum of salary paid to Party I workmen; the number of years they have worked, the period of time taken for disposal of the present reference and the mental and physical hardships undergone by Party I workmen during the pendency of adjudication of this dispute, I am of the considered opinion that ends of justice would be met by granting total compensation of Rs. 2,00,000/- each to both the Party I workman which compensation in my view shall be appropriate, just and equitable in the circumstances of this case.

53. Records reveal that vide order dated 25-08-04 (Exb. 20) my ld. predecessor had partly allowed the application for interim relief filed by Party I Workmen, by ordering that Party II shall pay to Party I workmen 50% of their last drawn wages as subsistence allowance from the date of their dismissal from service i.e. from 2-8-99 till the final

award is passed in this reference. It is also observed in this order that payment of this subsistence allowance is subject to the final order that may be passed in the award on the issue of back wages. Records further reveal that Party II challenged the above order before the Hon'ble High Court of Bombay at Goa in W. P. No. 461/2004 and the order was stayed subject to deposit of entire monetary liability flowing from the impugned order within 10 weeks from the day of the passing of the order which was passed by the Hon'ble High Court on 2-8-06. It is observed in this order that in the event of such deposit, the Registry is directed to invest this amount in any nationalized bank, initially for a period of 36 months and shall keep the said investment renewed from time to time until further orders. Records also reveal that vide order dated 10-6-13, the Hon'ble High Court while directing this Tribunal to dispose off the present reference as expeditiously as possible and in any event on or before 31-6-14, ordered that during the pendency of this reference the interim order passed on 2-8-06 shall continue until disposal of this reference and the amount deposited pursuant to the said interim order shall be subject to the final result in the reference proceedings. Ld. advocates however were not able to state during the arguments before this court, about quantum of amount deposited before the Hon'ble High Court.

54. Nevertheless, since discussion supra makes it clear that Party I workmen are not entitled to claim back wages but to the compensation, as stated above, I am of the considered view that the amount if deposited before the Hon'ble High Court in W. P. No. 461 of 2004, pursuant to order dated 2-8-2006, shall be adjusted towards the above amount of compensation awarded to these respective workmen, in equal shares. In case the said amount along with interest accrued on it is, more than what has now been awarded to Party I workmen, the balance amount shall be refunded to Party II and in case the said amount along with interest accrued on it, is less than what has now been awarded to Party I workmen, than Party II shall pay the said balance amount to Party I workmen accordingly. Hence my findings.

55. In the result and in view of discussion supra, I pass the following:

ORDER

1. It is hereby held that the action of the management of M/s. Marmagao Steel Limited, Curtorim, in dismissing from the services the following two workmen, on the dates shown against their names, is illegal and unjustified.

- (1) Shri Umashamkar Yadav with effect from 02-08-99.
- (2) Shri Jayaprakash Yadav with effect from 02-08-99.

2. The Party II is directed to pay to Party I workmen monetary compensation of Rs. 2,00,000/- (Rupees two lakhs only) each, within two months from the date of publication of Award failing which the same shall carry interest at the rate of 9% p.a.

Inform the Government accordingly.

(Bimba K. Thaly)
Presiding Officer
Industrial Tribunal-cum-
-Labour Court-I.

Office of the Commissioner, Labour and
Employment

Order

No. CLE/(RIA-05)/2008/3830

Read: Order No. CLE/(RIA-05)/2008/5717 dated 08-09-2010.

Order No. CLE/(RIA-05)/2008/5748 dated 23-08-2012.

Order No. CLE/(RIA-05)/2008/2964 dated 07-06-2013.

Consequent upon superannuation of Smt. Pratima Naik, Deputy Labour Commissioner, Panaji, the Officer mentioned below is appointed as Public Information Officer for the area of the jurisdiction as shown below to deal with the applications received from the public under the Right to Information Act, 2005.

Sr. No.	Name of the Officer & Designation	Public Information Officer	Area of Operation
1.	Shri Milind P. Govekar, Labour Welfare Officer, Panaji-Goa	Public Information Officer	North Goa District

This arrangement shall continue until the appointment of Deputy Labour Commissioner, Panaji or till further instructions whichever is earlier.

F. Rodrigues, Commissioner (Labour and Employment).

Panaji, 1st August, 2014.

Department of Personnel

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Order

No. 7/2/99-PER(PF-IV)/4558

In pursuance to the Government of India, Ministry of Home Affairs, New Delhi Order No. 14020/01/2014-UTS-I(Part-IV) dated 18-07-2014, the Governor of Goa is pleased to relieve Shri R. Mihir Vardhan, IAS, Collector (North), Panaji from this Administration, with effect from 31-08-2014 (a.n.) to take up his new assignment at Puducherry.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary Personnel-I).

Porvorim, 21st August, 2014.

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Order

No. 7/2/99-PER(PF-IV)

In pursuance to the Government of India, Ministry of Home Affairs, New Delhi Order No. 14020/01/2014-UTS-I(Part-IV) dated 18-07-2014, the Governor of Goa is pleased to relieve Shri Hage Batt, IAS, Secretary (Ports) from this Administration, with effect from 31-08-2014 (a.n.) to take up his new assignment at Government of Arunachal Pradesh.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 21st August, 2014.

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Department of Public Health—
Order

No. 2/3/2008-IV/PHD

Sanction of the Government is hereby conveyed permitting Dr. Sujata Satoskar, Assistant Professor in the Department of Oral Medicine & Radiology in Goa Dental College and Hospital, Bambolim Goa to rejoin her duties in Goa Dental College and Hospital, Bambolim w.e.f. 01-08-2014 (f.n.) by

curtailing the Extraordinary leave granted to her vide Order of even number dated 07-11-2012, considering that there is a vacant post of Assistant Professor available in the Department of Oral Medicine & Radiology in Goa Dental College and Hospital in terms of Government Notification No. 2/5/95-PER dated 23-09-2008.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 31st July, 2014.

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Order

No. 4/16/2001-II/PHD/Part1

Read: Memorandum No. 4/16/2001-II/PHD/ /Part 1 dated 20-03-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/30(6)/2011/409 dated 22-01-2014, Government is pleased to appoint Dr. Isha Sanjay Deshmukh (PH) to the post of Assistant Lecturer in the Department of Paediatrics in Goa Medical College & Hospital, Bambolim-Goa on temporary basis in the Pay Band-3, ₹ 15600-39100+Grade Pay of ₹ 5400/- with immediate effect and as per the terms and conditions contained in the Memorandum cited above.

Dr. Isha Sanjay Deshmukh shall be on probation for a period of two years.

Dr. Isha Sanjay Deshmukh has been declared medically fit by the Medical Board.

The appointment is made subject to the verification of her character and antecedents. In the event of any adverse remarks noticed by the Government on verification of her character and antecedents, her services shall be terminated.

The appointment is made against the vacancy occurred due to creation of the posts of Assistant Lecturer in Paediatrics vide Order No. 4/4/2010-II/ /PHD dated 04-08-2011 and subsequently revived vide Order No. 4/16/2001-II/PHD/Part 1 dated 04-03-2014.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 4th August, 2014.

Order

No. 22/3/2000-I/PHD

Read: Memorandum No. 22/3/2000-I/PHD dated 25-02-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/24(2)/2013/433 dated 04-02-2014, Government is pleased to appoint Dr. Pranay Budkule to the post of Junior Physician (Group "A", Gazetted) in the Pay Band-3, of ₹ 15,600-39,100 with ₹ 5,400/- Grade Pay under the Directorate of Health Services with immediate effect as per the terms and conditions contained in the Memorandum cited above.

Dr. Pranay Budkule shall be on probation for a period of two years.

Dr. Pranay Budkule is posted at Community Health Centre, Ponda against the post revived vide Order No. 48/38/2008-I/PHD dated 08-07-2013.

Dr. Pranay Budkule has been declared medically fit by the Medical Board. His appointment is made subject to the verification of his character and antecedents. In the event of any adverse matter noticed by the Government on verification of character and antecedents, his services shall be terminated.

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).

Porvorim, 8th August, 2014.

Order

No. 4/14/2003-II/PHD/Vol. XVIII/1287

On the recommendation of the Goa Public Service Commission conveyed vide their letter No. COM/II/12/30(1)/06/667 dated 05-08-2014, Government is pleased to declare Dr. Vijraj Nagoji Naik Namshikar, Lecturer, Department of Anaesthesiology, Goa Medical College to have satisfactorily completed his probation period of two years w.e.f. 02-01-2012 to 01-01-2014 and to confirm him in the post of Lecturer in the Department of Anaesthesiology in Goa Medical College, Bambolim with immediate effect.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 11th August, 2014.

Addendum

No. 4/1/2014-IV/PHD/Part/1268

Read: Government Order No. 4/1/2014-IV/PHD/ /Part dated 24-07-2014.

In the Government Order cited at preamble, after the first para, following para shall be added:

"The contract appointment shall be for a period of one year with effect from the date of joining the post".

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 6th August, 2014.

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